

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
DONALD G. AND ILENE M. **HAGMAN** )

Appearances:

For Appellants: Donald G. **Hagman**, in pro. per.  
For Respondent: Paul J. Petrozzi  
Counsel

O P I N I O N

This appeal is made pursuant to section 18594' of the Revenue and Taxation Code from the action **of the** Franchise Tax Board on the protest of Donald G. and Ilene M. **Hagman** against a proposed assessment of additional personal income tax in the amount of \$206.71 for the year 1967.

The issue raised by this appeal is whether appellants satisfied the residency requirements of the income averaging provisions in the California Revenue and Taxation Code.

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Appellants were residents of the State of Wisconsin until the fall of 1962. In September of that year they sold their Wisconsin home and moved to Massachusetts where appellant Donald G. **Hagman commenced** study for his Master of Laws degree at Harvard University. During the latter part of 1962 and early 1963, appellant contacted several law schools regarding a teaching position for the following school year. His employment interviews included several at the University of California **at Los Angeles** (UCLA), necessitating a three-day stay at a hotel in Los Angeles (January 11-13, 1963). Thereafter he returned to Massachusetts to complete his studies. On January 17, 1963, UCLA offered appellant a teaching position for the 1963-64 school year. Appellant accepted this offer on January 28, 1963, **but he** and his family did not actually move to California until August 1963.

Appellants computed their tax liability for 1967 by using the income averaging method (Rev. & Tax. Code, **§§** 18241-18246). Respondent disallowed the use of that method on the ground that appellants were not residents of California during a portion of 1963, one of the four base period years.

The sections of the Revenue and Taxation Code pertaining to income averaging provide that an eligible individual may, under certain circumstances, average income for **a particular** year with income for the four preceding base years. (See Rev. & Tax. Code, **§§** 18241-18246.) In defining the term "eligible individual," section 18243, subdivision (b), specifically provides that "an individual shall not **be an** eligible individual for the computation year if, at any time during such year or the base period, such individual was a nonresident." The term "**computation** year" means the taxable year for which the taxpayer chooses the benefits of income averaging and the term "base period" is defined as the four taxable years immediately preceding the computation year. (Rev. & Tax. Code, **§** 18242, subds. (d)(1) and **(2).**) "Nonresident" means every individual other than a resident (Rev. & Tax. Code, **§** 17015) and "resident" is defined in section 17014 to include:

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(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from **the State.**

Taken together, the provisions cited above clearly indicate that taxpayers desiring to income **average must** be California residents throughout the entire computation year and base period. It is undisputed that appellants were California residents during the computation year and a major portion of the base period. However, since section 18243, subdivision (b) does not allow the use of income averaging by individuals who were nonresidents at any time during the computation year and base period, the question in this case can be limited to appellant's residency status on January 1, 1963 (the commencement of the base period in issue).

Appellants concede that on January 1, 1963, they did not qualify as residents under section 17014, subdivision (a). They contend, however, that they became domiciled in California on January 1, 1963, and therefore qualified as residents on that date within the meaning of section 17014, subdivision (b). They argue that, as of January 1, 1963, neither Wisconsin nor Massachusetts could be considered their state of domicile since they had left the former with no intention of returning and were in the latter only temporarily. **It** follows, appellants assert, that since they had a close connection with California during 1963 it is the logical choice as their state of domicile for that entire year. In support of this theory it is alleged that as of January 1, 1963, there was a high probability that appellant husband would be offered employment in California and, as of January 1, 1963, they had the intention of moving to this state permanently. The veracity of these

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allegations is assertedly proved by the facts that appellant received a job offer on January 17, 1963, accepted it on January 28, 1963, and moved to California with his family in August 1963.

We find no merit in appellants' novel arguments. It is an established rule of law that domicile has a continuing quality in that a person cannot lose one **domicile until another** has been acquired. (See Estate of Glassford, 114 Cal. App. 2d 181 [249 P.2d 908]; Murphy v. Travelers Ins. Co., 92 Cal. App. 2d 582 [207 P.2d 595].) Therefore, appellants could not have lost **their Wisconsin** domicile until they acquired a California domicile. To acquire a domicile by choice, it is settled that the concurrence of both physical presence and intent to remain permanently in the new location are essential. (See Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278 [41 Cal. Rpt. 673]; Aldabe v. Aldabe, 209 Cal. App. 2d 453 [26 Cal. Rptr. 208]; Estate of Lagersen, 169 Cal. App. 2d 359 [337 P.2d 102].) On January 1, 1963, appellants were not physically present in **California and** even their intention of moving here permanently which allegedly existed on January 1, 1963, appears to have been conditioned upon a job offer which was nonexistent **until January 17, 1963**. The facts that, subsequent to January 1, 1963, appellant received a job offer, accepted it, and moved to California, are irrelevant in a determination **of appellants'** domiciliary status on January 1, 1963.

Based on the record before us, we conclude that appellants were not California domiciliaries on January 1, 1963, nor were they residents on that date. Accordingly, respondent properly disallowed **appellants' use of** income averaging for their taxable year 1967.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding,, and good cause appearing therefor,

